

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1213 of 1997

in

SPECIAL CIVIL APPLICATION No. 6877 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

NIKHILESH NAGAJIBHAI DESAI

Versus

SAURASHTRA UNIVERSITY

Appearance:

MR ND NANAVALY for Petitioner
MR JR NANAVALY for Respondents

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT
Date of decision: 25/09/97

ORAL JUDGEMENT {Per : Thakkar, J.}

Admitted.

Mr. J.R Nanavati, learned counsel waives service of notice of admission on behalf of respondents. In the facts and circumstances of the case, matter is taken up for final hearing today.

This appeal is filed against an interim order passed by the learned Single Judge on September 19, 1997 in Special Civil Application No. 6877 of 1997.

The appellant is original petitioner. He filed the above petition for an appropriate writ, direction or order quashing and setting aside the decision taken by the Vice-Chancellor of Saurashtra University - respondent No. 2 herein of ordering repoll. The said petition is pending. According to the appellant, polling was fixed earlier and it took place on September 14, 1997.

The Vice-Chancellor of University-Respondent No. 2 herein was satisfied that urgent and emergent action was necessary, and hence, in exercise of power under sub-section (4) of Section 11 of the Saurashtra University Act, 1965 passed an order of repoll. It is not disputed by and between the parties that accordingly repoll has already been scheduled to be held on September 28, 1997 and counting is to take place on September 30, 1997. When the action of repoll is challenged which was ordered on September 15, 1997, the learned Single Judge issued notice making it returnable on October 6, 1997. The said petition is pending.

We have heard Mr. N.D Nanavati, learned senior counsel for appellant and Mr. J.R Nanavati, learned senior counsel for respondents-authorities.

Mr. Nanavati contended that the Vice-Chancellor has no power, authority or jurisdiction to order repoll in purported exercise of power under sub-section (4) of Section 11 of the Act. Mr. J.R Nanavati, on the other hand, relying upon various other provisions as also decision of the Hon'ble Supreme Court in The Marathwada University v. Seshrao Balwant Rao Chavan, AIR 1989 SC 1582 contended that the Vice-Chancellor has such powers. The main matter i.e. Special Civil Application is pending, in our opinion, therefore, it would not be advisable for us to express our opinion one way or the other and we refrain from doing so.

The next question is with regard to polling,

counting and declaration of results. It is an admitted fact that polling has already taken place on September 14, 1997. It is also not disputed that the counting has not taken place. The second admitted fact is that respondent No. 2 has ordered repolling which is to take place on September 28, 1997 and counting is to take place on September 30, 1997. Mr. Nanavati submitted that when polling has already taken place on September 14, 1997, repolling may be stayed. In our opinion, ordinarily, such a power is not exercised and that too at this stage when the main matter is pending and the power, authority and jurisdiction of the Vice-Chancellor is yet to be determined. We are, therefore, not impressed by the said argument that the stay should be granted against the polling and we accordingly do not grant that stay at this stage.

The next prayer is with regard to counting. So far as the first election is concerned, polling has already taken place on September 14, 1997 and repolling is to take place on September 28, 1997. According to the schedule of Election Programme, recounting of second polling will take place on September 30, 1997. In the facts and circumstances of the case, we direct that counting for the election to be held on September 28, 1997 may not take place but if the University is of the opinion that the work of counting may be over, it is hereby directed that the University will count polling of both the dates namely September 14, 1997 and September 28, 1997. In other words, counting of polling only of September 28, 1997 will not take place on September 30, 1997.

So far as declaration of results is concerned, it is hereby directed that till the main matter is decided by the learned Single Judge, or any other order is to be passed on October 6, 1997 or thereafter, declaration will not take place till then.

For the foregoing reasons, this appeal is partly allowed. Result of neither of the elections is to be declared. In the facts and circumstances of the case, no order as to costs.

Prakash*